

REMARKS

Claims 4-15 are pending in this application, of which claims 4, 5, and 11 – 15 stand withdrawn. Claims 1 – 3 were previously cancelled without prejudice or disclaimer to the subject matter therein. Therefore, claims 6 – 10 are presented for reconsideration in view of the foregoing amendments and following remarks.

It is respectfully submitted that the enclosed amendments introduce no new matter within the meaning of 35 U.S.C. § 132.

Rejection under 35 USC §112

In the outstanding Office Action, claim 7 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite. The Examiner has directed the applicant's attention to the phrase "the insulating films serve as second storage capacitors" in claim 7.

Response

Applicant submits that the above amendments to claims 6 and 7 obviate the Examiner's rejection.

Specifically, claim 6 has been amended, and now recites that the "light blocking metal films [(28)]" have "first portions, second openings [(28a)] surrounding the first portions, and a second portion surrounding the second openings [(28a)] to electrically isolate the first portions from one another." The "reflective pixel electrodes [(30)] and the first portions of the light blocking metal films [(28)] are electrically connected to each other through first via holes

[(Via3)]” and “the first portions of the light blocking metal films [(28)] and the normal metal films [(26)] are electrically connected to each other through second via holes [(Via2)]”

Applicant has thereby clarified that the light blocking metal-containing films (33) are electrically connected to the first portion of the light blocking metal films (28) that are electrically isolated from the second portion by the second openings (28a). Consequently, and as claimed in Claim 7, “insulating films between the second portion of the light blocking metal films and the light blocking metal-containing films facing the second portion serve as second storage capacitors.”

Accordingly, as the above amendments obviate the rejection made by the Examiner, Applicant respectfully requests that the Examiner withdraw the rejections of claim 7 under 35 U.S.C. 112, second paragraph.

Rejections over JP2002-357820 to Fumitoshi et al.

In the outstanding Office Action, claims 6 – 8 and 10 were rejected under 35 U.S.C. 102(b) as anticipated by Japanese Patent Document JP2002-357820 to Fumitoshi et al. (hereinafter referred to as “the ‘820 Fumitoshi Publication”), and claim 9 was rejected under 35 U.S.C. 103(a) as being unpatentable over Fumitoshi in view of U.S. Patent No. 6,781,650 to Colgan et al. (hereinafter referred to as “Colgan.”)

Response

The Examiner's rejection is traversed. Reconsideration and withdrawal of the rejection are requested. Applicant submits that the '820 Fumitoshi Publication is not a valid reference under any section of 35 U.S.C. 102 or 103.

For a reference to anticipate an invention under 35 U.S.C. 102(b), as applied by the Examiner in the present rejections, the reference must have been "patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States."

As noted on its face page, the '820 Fumitoshi Publication was published on **December 13, 2002**. This is the effective date of the '820 Fumitoshi Publication as a reference under 35 U.S.C. 102.

The present application was filed in the United States on **December 10, 2003**, and claims priority to Japanese Patent Application 2002-362406 (hereinafter referred to as "the JVC '406 Application"), filed on December 13, 2002. A certified translation of the JVC '406 Application accompanied the filing of the present application, perfecting the priority thereof. Accordingly, the present application has a perfected priority date of **December 13, 2002**, the same date on which the Fumitoshi Publication was published.

Accordingly, as the present application was filed within one year of publication of the '820 Fumitoshi Publication, the '820 Fumitoshi Publication is not a valid reference under 35 U.S.C. 102(b).

Should the Examiner attempt to resubmit the present rejection under 35 U.S.C. 102(a), Applicant asserts that the '820 Fumitoshi Publication must show by its effective date that the presently claimed invention was "known or used by others in this country, or patented or described in a printed publication in this or a foreign country, *before the invention thereof by the applicant for patent.*" 35 U.S.C. 102(a), emphasis added. "A rejection based on 35 U.S.C. 102(a) can be overcome by...perfecting a claim to priority under 35 U.S.C. 119(a)-(d)" or 35 U.S.C. 120. MPEP 706.02(b). "For 35 U.S.C. 102(a) to apply, the reference must have a publication date *earlier in time* than the effective filing date of the application." MPEP 706.02(a)(II)(C)

As the '820 Fumitoshi Publication was not published before the perfected priority date of the present application (see 35 U.S.C. 102(a)), the '820 Fumitoshi Publication is not a valid reference under 35 U.S.C. 102(a). Applicant reserves the right, if appropriate, to file a declaration under 37 CFR 1.131 further antedating the '820 Fumitoshi Publication.

Should the Examiner attempt to resubmit the present rejection under 35 U.S.C. 102(e) or 103, Applicant notes that foreign references may not be cited under 35 U.S.C. 102(e), and that a reference must qualify under at least one section of 35 U.S.C. 102 to be cited as a primary reference under 35 U.S.C. 103.

Finally, Applicant notes that the mere fact that the '820 Fumitoshi Publication was cited in an Information Disclosure Statement by the client does not permit its invalid use as a reference under 35 U.S.C. 102 or 103. See 37 CFR 1.97(h), which states that the "filing of an information

disclosure statement shall not be construed to be an admission that the information cited in the statement is, or is considered to be, material to patentability as defined in § 1.56(b)."

Accordingly, as the '820 Fumitoshi Publication is not a valid reference against the present application under any section of 35 U.S.C. 102 or 103, Applicant submits that it cannot anticipate the present claims, and further that the Examiner has failed to make a *prima facie* case of obviousness thereto.

Applicant submits that any delay in bringing the invalidity of the '820 Fumitoshi Publication to the Examiner's attention was unintentional.

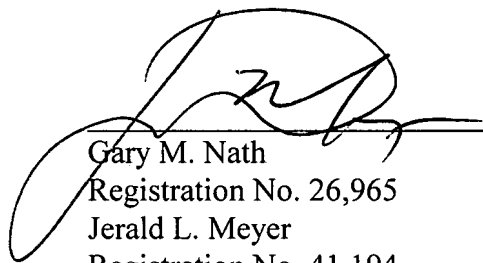
CONCLUSION

In light of the foregoing, Applicant submits that the application is in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicant respectfully requests that the Examiner call the undersigned.

Respectfully submitted,
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